

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

FILE:

LIN 07 015 52763

Office: NEBRASKA SERVICE CENTER

Date: **APR 29 2009**

IN RE:

Petitioner:
Beneficiary:


PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also found that the petitioner had not established she is one of that small percentage who have risen to the very top of her field of endeavor.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has submitted comparable evidence of her extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on October 19, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a model. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.¹

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local or regional publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

On appeal, counsel states:

[The petitioner] has been an integral part of many top fashion publications, which rely on the artist to produce outstanding images in order for the publication to be able to retain the attention of their sophisticated readers. . . . Additionally, because the [petitioner's] work was featured in these publications, the tear sheets serve as evidence of the [petitioner's] work featured in major trade publications or other major media.

The petitioner submitted tear sheets from regional publications such as *Philadelphia Style* and *Simply the Best* (South Florida). The copies of the majority of the petitioner's tear sheets do not identify the publications in which the images appeared or their dates. The petitioner also submitted evidence

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision. On appeal, counsel asserts that the petitioner meets the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(iii), (v), (vii) and (viii).

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

showing that her photograph was used to market products for retailers such as Saks Fifth Avenue, Swatch, LensCrafters, Vivienne Tam, Zoomzoom.com, Pepe Jeans, Chantelle, and Dooney and Bourke. The petitioner's initial submission also included letters from the Bookings Editors of *Marie Claire* and *Lucky* magazines indicating that they have utilized her images in their publications. The petitioner also submitted evidence showing that her photographs appeared in *Elle* magazine, but the date of the issue was not provided. As the plain language of this regulatory criterion requires that the published material be "about the alien" including "the title, date, and author of the material," we cannot conclude that the preceding evidence meets this requirement. We note that it is inherent to the profession of modeling that one's image will appear in print. Glamour shots and advertisements are not published materials about the petitioner; they are the result of being able to work in her field.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

We acknowledge the petitioner's submission of several reference letters praising her talent as a model and discussing her activities in the field. Talent and employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted her field.

[REDACTED], Office Manager, Next Management, London, England, states:

Next Management is a world-renowned agency based in London, England and established in 1996.

We boastfully represent one of the world's most acclaimed models, [the petitioner]. I can testify, without uncertainty, that [the petitioner] is recognized throughout the international fashion industry as one of the select few female models who has maintained an outstanding following for a consistent number of years. On any given day, [the petitioner] could find a booking in any city in the world.

* * *

[The petitioner] has worked for such renowned British clients as Marks and Spencer Stores, Grattans Catalogue, *Marie Claire* and *Elle Magazines*.

* * *

While many industry leaders attribute [the petitioner's] success to her versatility, or ability to conform to any targeted market segment, I personally believe that [the petitioner's] commendable stature is a direct product of her natural ability before a camera. While no one

can define exactly what ingredient makes one individual more 'photogenic' than another, the fact remains, [the petitioner] possesses it tenfold.

Director of Next Management of Miami, Florida, states:

Over the course of [the petitioner's] career she has built a reputation as one of the most prominent models in the entire world. [The petitioner] has reached that special level of a top money earner who can work every day of the year if she so desires. [The petitioner's] outstanding talent is premised on her uncanny ability to agree with the camera, time after time. This reputation precedes her success.

I support my claims based on the vast number of clients from all over the world, who regularly demand [the petitioner] for their advertising campaigns, editorials, or catalogues. Through our agency, [the petitioner] works regularly for such important companies as Ocean Drive, Burdines, and Avanti-Case Hoyt.

[REDACTED], Next Management, Paris, states:

I provide this recommendation based on my knowledge of the fashion industry due to my established reputation and work in the field as a booker for models in Paris, France.

I am familiar with the talent of [the petitioner] on the basis of having personally managed his [sic] modeling career, enabling her to work with some of the most prestigious clients in Paris. Among others, [the petitioner] has either appeared in print editorials, advertising campaigns or live fashion shows for Sonia Rykiel, Lolita Lempika, Hanae Mori, Torrente, Emmanuel Ungaro, Nina Ricci, Céline, Isabelle Marant, Dominique Sirop as well as countless television commercials. She got prestigious campaigns as Chanel, Shiseido, Le Printemps.

Director of Next Management of Los Angeles, California, states:

[The petitioner] is clearly one of the most important models of today. Her beautiful image can always be found in leading fashion editorials, advertisements and catalogues. [The petitioner] is extremely versatile. . . . While other models "wait for bookings," [the petitioner] is always working.

[REDACTED] Director of Marketing and Ecommerce, Louis Vuitton North America, states:

[The petitioner] has become increasingly well known as a model who will infallibly produce exciting results. I would recommend her to anyone who wished to put out an eye-catching advertising campaign. [The petitioner] has a keen and stylish aesthetic that manifests itself in all of her work. As a result, she is the model of choice for a broad variety of discerning publications and advertising campaigns.

The United States is the perfect place for [the petitioner] to become even better at what she does, and I feel sure that the tremendous demand for her talent will only continue to grow.

The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. *See* 8 C.F.R. § 204.5(h)(2).

Casting Director, Barrington Management, New York, states:

[A]side from [the petitioner's] innate physical attributes, she has without a doubt, successfully produced the look and mood required in each photo shoot. This unique ability is what makes [the petitioner] such an extraordinary model in her field, one of the select few in her industry. Her exceptional skill to produce the desired look has, in turn, enabled me to fulfill the requirements to my clients and produce outstanding castings; as such, [the petitioner] is elite in her field. Among others, I have had her on casting assignments for L'OREAL, TARGET and LEVI'S.

a fashion photographer whose career spans five years, states that the petitioner "is a model whose talent can only be described as extraordinary."

, Photographer's Agent for Ray Brown, states:

I have found time and time again, [the petitioner] to be without fail one of the best model resources we have here at Ray Brown. Few fashion models that I know of can consistently meet their clients' demands with the grace that she does.

* * *

[The petitioner] inherently understands what it takes to make fashion work. More than other models, I know, she possesses the clarity (something not many models of her caliber don't find easy to contend with) of how to marry fashion and advertising, and how to make each of these demands move in both practical and abstract terms.

* * *

[The petitioner] is one of the most consistent, naturally gifted and dedicated models I've come across in a long while. The bounties she provides us with here [at] Ray Brown are many – both conceptually and practically and her work is perhaps among of the most innovative and marketable I've seen in my extensive career.

We acknowledge that the petitioner's bookings have contributed to the financial success of the agencies that represent her and her clients, but there is no evidence demonstrating that her work constitutes original contributions of major significance in the field. [REDACTED] letter does not

specify the innovative modeling concepts developed by the petitioner and the extent to which this work has impacted her industry.

Styling Director, Marketing and Communications, J.C. Penny Company, Inc., states:

[The petitioner] has become increasingly well known as a model who will infallibly produce exciting results. I would recommend her to anyone who wished to put out a stimulating advertising image. [The petitioner] has a keen and stylish aesthetic that manifests itself in all of her work. As a result, she is the model of choice for a broad variety of discerning publications and advertising campaigns.

[The petitioner] provides some of the most cutting-edge imaging available right now. On behalf of J.C. Penney, [the petitioner] has become a fixture in our national catalogue productions.

[REDACTED] Casting Director, SW2, New York, states:

I am well qualified to conclude that [the petitioner] really rises above the others as a model of extraordinary ability. When [the petitioner] first came to New York, she immediately became a force in the industry, booking huge campaigns and major editorials. Her ability to create an image which imprints itself on the customer's mind is a hugely lucrative one, and [the petitioner] possesses the unforgettable look that clients will pay anything to have. As such, I have successfully booked [the petitioner] for multiple projects with Conde Nast Publications.

[REDACTED] a booker for the Fashion Model Management Spa, Milan, states:

I am familiar with the talent of [the petitioner] on the basis of having personally managed her modeling career, enabling her to work with some of the most prestigious clients in Italy. Among others, [the petitioner] has either appeared in print editorials, advertising campaigns or live fashion shows for Ferragamo, Ferré, Sinibaldi, Lorenzo Riva, Cavalli, Amuleti, as well as countless television commercials.

I can confidently testify that [the petitioner's] reputation has achieved international stature. She has reached a level where industry leaders now describe her as a "star."

With regard to the petitioner's achievements as a model, the letters of recommendation do not specify exactly what the petitioner's original artistic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in her field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner's modeling has earned the admiration of those with whom she has worked, there is nothing to demonstrate that her modeling has had major significance in the field at large. For example, the record does not indicate the extent

of the petitioner's influence on other models nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

On appeal, counsel states: "[The petitioner's] artistry in the fashion industry has been widely displayed in numerous publications, including magazines, catalogues, advertisements and live fashion shows." The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to models such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

Nevertheless, regarding the petitioner's participation in live fashion shows, we do not find that fashion shows are designed to exhibit the work of the models. Rather, their purpose is to exhibit the work of the fashion designers. The selection of participants for the show by its organizers is based on the talents of the designers, not the models. As such, we cannot conclude that fashion shows are artistic showcases or exhibitions of fashion models. With regard to the petitioner's glamour shots and print advertisements, we cannot conclude that they are artistic exhibitions or showcases of her work. Rather, their purpose is to market products and services. We must consider the evidence submitted as to whether it is indicative or consistent with national or international acclaim. Appearing in a fashion show or in a print advertisement is evidence that the model is capable of securing employment. Even in a competitive field like modeling, the ability to secure employment is not indicative of national or international

acclaim. The petitioner's evidence is not comparable to the type of exclusive artistic exhibition or showcase contemplated by the regulations.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel argues that the tear sheets submitted by the petitioner from magazines such as *Vogue*, *Madame Figaro*, *L'Officiel*, *Elle*, *Tank*, *Annabel*, *Amica*, *Votre Beaute*, and *Marie Claire* represent "evidence of the leading or critical role the [petitioner] has played for magazines and publications of distinguished reputations." The petitioner submitted a reference letter from Amy Argento, Bookings Editor, *Marie Claire*, stating:

[The petitioner] delivers outstanding results from every assignment, even under the most undesirable conditions. Her skill is both a commercial and artistic one, highly profitable in this arena.

I believe I speak for everyone at *Marie Claire* when I announce how proud we are to have [the petitioner] in our network of contributors. We will most certainly continue to book her for important assignments.

While [redacted]'s letter indicates that the petitioner has performed admirably on her modeling assignments for *Marie Claire*, the evidence submitted does not establish that she played a leading or critical role for the magazine. For example, there is no evidence differentiating the petitioner's role from that of the other models in *Marie Claire*'s "network of contributors," let alone its cover models and full-time magazine staff. With regard to the remaining publications identified by counsel, there is no evidence showing that the petitioner's role for them was leading or critical. The record lacks evidence from their editors or managerial staff demonstrating the importance of the petitioner's role in their overall success or standing.

Counsel further states: "The [petitioner] has been selected to appear in these publications based on her ability to meet the advertising needs of clients or to embody a certain image on which brands rely for their sales and business success." Counsel points out that the petitioner has been featured in advertising campaigns for numerous companies including Swatch, Pepe Jeans, Dooney & Bourke, and Shiseido. The record, however, does not include letters of support from the preceding companies indicating that the petitioner's role for them was leading or critical, or supporting evidence showing that they have distinguished reputations. Although the names may be recognizable, name recognition does not equate to a distinguished reputation. We acknowledge that advertising is important to any company

and that major companies spend considerable sums of money on advertising. In addition, we do not contest that the modeling industry is competitive. We cannot conclude, however, that every model who appears prominently in a print or promotional advertisement has played a critical role for the company featured in the advertisement. For example, the petitioner has not submitted evidence that an increase in sales correlated with her appearance in the preceding companies' advertisements.

The letter from Shanna Rozelle states that the petitioner "has become a fixture" in J.C. Penny's national catalogue productions, but there is no evidence showing that her role was leading or critical to the company as a whole. For example, there is no evidence showing that the company's market share or sales revenue significantly increased after the petitioner's photographs appeared in their catalogue.

With regard to the recommendation letters from talent agencies for which the petitioner has worked such as Next Management, SW2, and Barrington Management, aside from Next Management's own self-serving promotional material, there is no evidence showing that these agencies have distinguished reputations. Further, the evidence submitted by the petitioner does not establish that her role for them was leading or critical. There is no evidence demonstrating how the petitioner's role differentiated her from the other models utilized by these agencies, let alone their senior management. For example, there is no evidence showing the percentage of revenue earned by the petitioner's bookings in comparison to that of the other top models the agencies represented.

In this case, the documentation submitted by the petitioner shows that she performed admirably on the modeling projects assigned to her, but it does not establish that she was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim required by this highly restrictive classification. Accordingly, the petitioner has not established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted the following:

1. "Paid Jobs" statement from Next Management in Milan, Italy reflecting that the petitioner earned 48,832 Euros from May 1999 through April 2005.
2. Account Statement from Next Management in London reflecting that the petitioner earned 44,365 Euros from January 2004 through September 2006.
3. Multiple "Remittance Advice" statements from Next Management LLC from 2000 through 2006.
4. A "Models Agency Manager for Windows" spreadsheet reflecting the petitioner's earnings from 1999 through 2006.
5. An October 1, 2000 modeling agreement with Shiseido Company Ltd.; and
6. A March 2004 modeling contract with Kenzo Parfums.

On appeal, counsel states:

The beneficiary's income for 2005 amounted to over \$128,000.

According to the U.S. Department of Labor Bureau of Labor Statistics, the national annual mean wage for a fashion model is approximately \$27,570 per year. Further, models at the 90th percentile of the field earn, on average, \$36,080 per year. In contrast, [the petitioner] earned \$128,852 in 2005 as a model for NEXT in London, Milan, and New York, roughly \$100,000 more per year than other top models.

The petitioner, however, did not submit a copy of her income tax return or Form W-2, Wage and Tax Statement, to corroborate counsel's assertion regarding her earnings of \$128,852 in 2005. We note here that the total dollar amount of the petitioner's "Remittance Advice" statements from Next Management for 2005 did not equal the income amount specified by counsel. Further, the record does not include a copy of the information from the U.S. Department of Labor's Bureau of Labor Statistics reflecting that "the national annual mean wage for a fashion model is approximately \$27,570 per year" and that "the 90th percentile of the field earn, on average \$27,570 per year." Without documentary evidence to support counsel's claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner's initial submission included "Online Wage Library – FLC Wage Search Results" showing the median earnings of models in the New York and New Jersey metropolitan region. For example, the Level 4 Wage (fully competent) for models in this area was \$65,728 per year. The record, however, does not include a reliable comprehensive earnings statement (such as a tax return or Form W-2) for the petitioner's modeling income for 2005 or any other year. Further, the petitioner must submit evidence showing that her earnings place her in that small percentage at the very top of her field at the national or international level, rather than simply in the top half at the local or regional level. Median regional wage statistics for models in New York and New Jersey do not demonstrate that the petitioner has commanded a high salary or significantly high remuneration in relation to all others in her field. Therefore, the petitioner has failed to establish that she meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel initially argued that the petitioner's commercial success is demonstrated by her appearance in the advertisements of leading companies. The plain language of this regulatory criterion indicates that it applies to the "performing arts" rather than modeling. The regulation at 8 C.F.R. § 204.5(h)(3)(x) makes very clear the type of evidence necessary to meet this criterion: box office receipts or sales of media featuring the petitioner's performances. We do not find that the petitioner's work for various companies' marketing campaigns is comparable to the type of data evidencing commercial success specifically mandated by this criterion. On appeal, the petitioner does not address this regulatory criterion.

In light of the above, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Having some degree of national or international exposure as a model is not necessarily indicative of the type of sustained national or international acclaim for recognized achievements in the field as contemplated by the statute and regulations.

On appeal, counsel argues that the reference letters from experts in the field are comparable evidence of the petitioner's extraordinary ability as a model. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than the opinions of one's professional acquaintances.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.